

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

YOSHIDA FOODS INTERNATIONAL, ) Case No.  
LLC, an Oregon Limited Liability )  
Company, ) **COMPLAINT**  
 ) **(Breach of Contract)**  
Plaintiff, )  
 ) Prayer: \$116,683.40  
v. )  
 ) Fee Authority: ORS 21.160(1)(c)  
FEDERAL INSURANCE COMPANY, an )  
Indiana Corporation ) NOT SUBJECT TO MANDATORY  
 ) ARBITRATION  
Defendant. ) JURY TRIAL REQUESTED

**COMPLAINT**

For its complaint against Federal Insurance Company (“Federal”), Plaintiff Yoshida Foods International, LLC (“Yoshida Foods”), alleges as follows:

*Nature of Complaint*

1.

Yoshida Foods suffered a ransomware attack and made a claim under its crime policy for the ransom it was compelled to pay and related IT services. Federal denied the claim.

*Parties, Jurisdiction, and Venue*

2.

Yoshida Foods is an Oregon limited liability company.

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1 3.

2 Upon information and belief, Federal was at all relevant times an insurer incorporated  
3 under the laws of the State of Indiana with its primary place of business in New Jersey. Federal  
4 is authorized to do, and was at all relevant times doing, business in Oregon.

5 4.

6 This Court has personal jurisdiction over Federal pursuant to ORCP 4. Upon  
7 information and belief, at all relevant times, Federal transacted insurance in Oregon within the  
8 meaning of the Oregon Insurance Code, ORS 731.146, and claims giving rise to this lawsuit  
9 arose out of promises by Federal to provide coverage for persons, property, and/or risks located  
10 within Oregon.

11 5.

12 Venue is proper in this Court under ORS 14.030 *et seq.* Upon information and belief,  
13 Federal has at all relevant times conducted regular, sustained business in Multnomah County.

14 *The Policy*

15 6.

16 Federal issued Yoshida Foods an insurance policy effective from October 1, 2020 to  
17 October 1, 2021, bearing policy number 8260-3324 (the “Policy”). The Policy contains a  
18 “Crime Coverage Part” providing, among other coverages, “Computer Fraud Coverage” of a  
19 \$1,000,000 limit of liability.

20 7.

21 “Insuring Clause (E)” of the “Crime Coverage Part,” titled “Computer Fraud  
22 Coverage,” provides that “[t]he Company shall pay the **Parent Organization** for direct loss of  
23 **Money, Securities or Property** sustained by an **Insured** resulting from **Computer Fraud**  
24 committed by a **Third Party.**”

25 ///

26 ///

1 8.

2 The Policy's "Crime Coverage Part" provides that "**Computer Fraud** means the  
3 unlawful taking of **Money**, **Securities** or **Property** resulting from a **Computer Violation**." It  
4 further provides that:

5 **Computer Violation** means unauthorized:

- 6 A. entry into or deletion of **Data** from a **Computer System**;  
7 B. change to **Data** elements or program logic of a **Computer System**, which is  
kept in machine readable format; or  
8 C. introduction of instructions, programmatic or otherwise, which propagate  
themselves through a **Computer System**,

9 directed solely against an **Organization**.  
10

11 *The Loss*

12 9.

13 On March 29, 2021, Yoshida Foods suffered a ransomware attack ("the Attack").

14 10.

15 On April 9, 2021, Yoshida Foods paid \$100,000 to the perpetrator ("the Ransom").  
16 Yoshida Foods also paid \$7,075.96 to SharpForm IT Integration, Inc. for IT Services related to  
17 the Attack and payment of the Ransom via Bitcoin ("the IT Services").

18 11.

19 Yoshida Foods made a claim to Federal under the Policy, to which Federal assigned  
20 claim number KY21K2415699 ("the Claim").

21 *Federal's Denials*

22 12.

23 On June 4, 2021, Federal denied the Claim on the grounds that "there was no direct loss  
24 to [the insured] resulting from Computer Fraud because while [Yoshida Foods] was  
25 temporarily unable to access its systems, there was no permanent loss of **Money**, **Securities**, or  
26 **Property** that directly resulted from a **Computer Violation**."

13.

Federal also concluded in its June 4, 2021 letter that “Yoshida’s ransom payment in this matter is not a direct loss of **Money** such that it is excluded under Exclusion III. (A) (7) and otherwise excluded by the Fraudulent Instructions Exclusion in Endorsement No. 6.” The Fraudulent Instruction Exclusion provides:

No coverage will be available under Insuring Clauses (B), (C), (D), (E) or (F) for loss resulting from any transfer, payment or delivery of **Money, Securities** or **Property** approved by an **Employee** or arising out of any misrepresentation received by any **Employee**, agent, independent contractor or other representative of the **Insured**, whether such transfer, payment or delivery was made in good faith or as a result of trick, artifice, fraud or false pretenses.

14.

Yoshida Foods challenged Federal’s denial in a letter dated June 9, 2021. Yoshida Foods provided authority debunking Federal’s conclusion that the ransom did not “directly result from” the ransomware and, relatedly, that the ransom was not a “direct loss.” Yoshida Foods also explained that the Fraudulent Instructions Exclusion does not apply, among other reasons, because the exclusion is limited to approval “by an **Employee**” as defined by the Policy, and Yoshida Foods’s decision to pay the ransom was made by Mr. Yoshida, an “**Executive**” as defined by the Policy. The term “**Employee**” includes an “**Executive**” only “while performing acts within the scope of the usual duties of an **Employee**.” Dealing with ransomware is not “within the scope of the usual duties of an **Employee**.”

15.

In a letter dated July 15, 2021, Federal denied the Claim again. This time, Federal did not contend that the ransom did not “directly result from” the ransomware or that the ransom was not a “direct loss.” Instead, Federal relied entirely on the Fraudulent Instructions Exclusion. Federal reasoned that “approval of transactions and payments,” no matter what the transaction or payment is for, “falls within the scope of the usual duties of an **Employee**.”

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**FIRST CLAIM FOR RELIEF**

(Breach of Contract)

*Count 1*

16.

Yoshida Foods realleges and incorporates as though set forth fully herein the allegations in paragraphs 1–15, above.

17.

The Policy covers the Ransom and the IT Services and obligates Federal to pay Yoshida Foods for the Claim.

18.

Yoshida fully performed and/or satisfied all obligations and conditions precedent required by the Policy, except any that were waived and/or excused by Federal, or as to which performance was prevented or no longer required due to Federal’s conduct.

19.

Federal breached the Policy by denying coverage for the Claim and the Loss and by refusing to pay for amounts owed under the Policy, including, but not limited to, for the Ransom and the IT Services.

20.

As a foreseeable and direct consequence of Federal’s breach, Yoshida has sustained, and continues to sustain, substantial actual damages, consequential damages, and out-of-pocket expenses, including, but not limited to, the coverage owed under the Policy. These damages total an amount to be determined at trial, but not less than \$107,075.96.

21.

Pursuant to ORS 742.061, Yoshida Foods is entitled to an award of its attorneys’ fees, costs, and disbursements incurred as a result of Federal’s denials and in bringing this action.

Pursuant to ORS 82.010, Yoshida Foods is also entitled to prejudgment interest at 9% *per annum* on all of its damages from the date incurred until the date judgment is entered.

*Count 2*

22.

Yoshida Foods realleges and incorporates as though set forth fully herein the allegations in paragraphs 1–21, above.

23.

The Policy contains an implied covenant of good faith and fair dealing that obligates Federal to act in good faith in handling any claim made by its insured and to refrain from taking any actions that interfere with Yoshida Foods’s right to enjoy the full benefits provided by the Policy and the law.

24.

Federal’s claims handling as alleged above constitutes a breach of its contractual duty to act in good faith and deal fairly with its insured, including, but not limited to, in applying unreasonable and arbitrary interpretations of Policy to deny the Claim.

25.

Yoshida has fully performed and/or satisfied all obligations and conditions precedent required by the Policy, except any that were waived and/or excused by Federal, or as to which performance was prevented or no longer required due to Federal’s conduct.

26.

As a foreseeable and direct consequence of Federal’s breach, Yoshida Foods has sustained, and continues to sustain, substantial actual damages, consequential damages, and out-of-pocket expenses, including, but not limited to, attorney fees spent dealing with Federal’s unreasonable interpretations and pursuing the recovery to which Yoshida Foods is entitled. These damages total an amount to be determined at trial, but not less than \$9,607.44.

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27.

Pursuant to ORS 742.061, Yoshida Foods is entitled to an award of its attorneys' fees, costs, and disbursements incurred as a result of Federal's denials and in bringing this action.

Pursuant to ORS 82.010, Yoshida Foods is also entitled to prejudgment interest at 9% *per annum* on all of its damages from the date incurred until the date judgment is entered.

28.

Yoshida Foods demands trial by jury in this action.

**WHEREFORE**, Yoshida Foods prays for judgment as follows:

1. On Count 1 of Yoshida Foods's First Claim for Relief: an award in favor of Yoshida Foods and against Federal in the amount of \$107,075.96, plus prejudgment interest at 9% *per annum*; costs, disbursements, and attorney fees incurred herein and as a result of Federal's denial; and such other relief as the court may deem just and proper; and

2. On Count 2 of Yoshida Foods's First Claim for Relief: an award in favor of Yoshida Foods and against Federal in the amount of \$9,607.44, plus prejudgment interest at 9% *per annum*; costs, disbursements, and attorney fees incurred herein and as a result of Federal's denial; and such other relief as the court may deem just and proper.

DATED: September 3, 2021.

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